

29th February 1760.

39

ANSWERS

FOR

The Magistrates and Town-Council of the Burgh of *Paisley*, and *Robert Fulton* Bailie and Delegate for the said Burgh;

TO

97.

The PETITION of Sir *Michael Stewart* of *Blackhall* Bart. and *William Cunningham* of *Craigends* Esq; two of the Freeholders of the County of *Renfrew*.

THE Magistrates and Town Council of *Paisley*, as representing the Community of the Burgh, stand infest, by Charter and Infestment from the Crown, in certain Lands, which are valued in the Cess-books of the Shire, at 1078 l. 6 s. 8 Pennies Scots; and as this is an unquestionable Freehold Estate, so the Magistrates and Council have been in the constant Use and Possession of voting by a Delegate, in all the Meetings of Freeholders, and at all the Elections of Commissioners to Parliament, for near a hundred Years past.

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Robert

Rbert Fulton, the eldest Bailie and Delegate of the Burgh, appeared at the Meeting of Freeholders at *Michaelmas* last, where the two Complainers were present, and voted at that Meeting without any Objection.

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Upon that Occasion a political Division appeared among the Freeholders; and the Complainers, finding the Burgh of *Paisley* adverse to their Views, have complained to your Lordships of their Title to remain upon the Roll of Freeholders of the County: But upon full Consideration of the Complaint, with the Answers, your Lordships sustained the Titles produced for the Town of *Paisley* and their Delegate, and dismissed the Complaint, and found them intitled to continue on the Roll of Freeholders for the Shire of *Renfrew*.

This Petition reclaims to your Lordships against the above Interlocutor: But, so far as the Respondents can discover, it contains no new Argument, either in Law or from Fact, which should induce your Lordships to alter your former Judgment.

The Respondents, to save Repetition and the Time of the Court, beg leave to refer your Lordships to their Answers to the Complaint, which they hope you will take the Trouble of perusing.

The Petitioners are pleased to state various Consequences, as arising from your Lordships Interlocutor, which they think inconvenient and unconstitutional; and from thence endeavour to rear an Argument against the Interlocutor. They say the Town of *Paisley* is the only Burgh of Barony in *Scotland* intitled to this Privilege; that, if their Right is good, it is altogether indefeasible, and their Delegate must remain for ever upon the Roll; and that such Delegate, as being the eldest upon the Roll, will have the Privilege of presiding in all the Meetings of Freeholders, in Absence of a former Commissioner.

But all these Consequences were under your Lordships Eye at pronouncing the Interlocutor, and appeared of no Moment. That *Paisley* is the only Burgh of Barony in *Scotland* intitled to this



this Privilege can be no Argument against their Right; on the contrary, it leaves your Lordships at more Liberty in your Decision; because it can draw to no Consequence or Precedent, and that their Right is perpetual and indefeasible, is imaginary, and does not follow from your Lordships Interlocutor, or any Thing which was stated in Support thereof; and as to the supposed Consequence, that the Delegate for *Paisley* must preside in the Meetings as first upon the Roll, in Fact, it never has yet happened, nor is likely to happen, because the Freeholders do from Time to Time make up the Roll in such a Way, as to give no Chance to the Delegate for this Burgh to preside at any Meeting of Election; and if that Inconveniency did arise, it would not solve the Argument.

It is said, that the Privilege, as here sustained to this Burgh, has an anomalous Appearance in the Law, and must fix an indelible Stain and Reproach upon it.

The Respondents must own they are at a Loss to understand the Meaning of this Observation. Is it any Stain or Reproach upon the Law, that, by the peculiar Custom of *Sutherland*, the Vassals of Subject-superiors, are intitled to vote for a Commissioner for the Shire? The Case of that County is much more anomalous, and out of the common Rules of Law than the present; and yet Custom established it, and the Parliament ratified it in Time coming.

In the present Case, the Respondents have shown, that their Right is founded in the original Principles of the Constitution, which required the Suit and Presence of all the King's Vassals in Parliament. That, before the Statute of *James I.* they must have been obliged to give Suit and Presence in Parliament, by a Delegate, amongst the other Vassals of the Crown; and after that Statute, which dispensed with the personal Attendance of the smaller Vassals of the Crown, they were intitled by their Delegate to join with the other small Barons and Freeholders of the County, in electing one or more Commissioners to represent them in Parliament. And accordingly the Delegate for this
Burgh

Burgh came upon the Roll of Freeholders for the County, soon after the Date of the Statute 1661, as duly qualified in Terms of that Statute, and has continued upon the Roll ever since that Time, near 100 Years.

And even after the Act 1681, concerning the Election for Commissioners for Shires, the Vote of the Delegate of this Burgh, or of any other Incorporation in the like Circumstances, was held to be good in Law, and agreeable to the Principles of the Constitution, as explained and enforced by that Statute. Accordingly, in that very Parliament 1681, a Master of an Hospital was found intitled to vote in respect of Lands belonging to the Hospital, being of the Extent or Value required by Law; and the only other Instance where this Question occurred

to be decided in Parliament, was in the Year 1703, in the Case of this very Burgh of *Paisley*, where it was again decided, That the Delegate for *Paisley* was intitled to vote among the Freeholders of the County; and agreeable to which Decision, the Delegate has voted at every Election since that Time without any Challenge. If other Incorporations, having the like Privilege, have suffered themselves to be excluded from the Rolls of other Counties, surely that can be no Argument for your Lordships excluding the Delegate of *Paisley* from the Roll of this County, after so long a Possession acquiesced in by the Freeholders of the County, for near 100 Years, and authorised by an express Decision of Parliament.

The Petitioners are pleased to say, That the above Decision of Parliament in the Year 1703, is not expressed in proper *decretory Words*, and that the Judgment of that high Court seems rather to have proceeded upon the Party's withdrawing his Objection to the Vote of *Paisley*, than on the Opinion of the Parliament, that the Objection ought to have been repelled.

But this Observation must appear very trivial, when your Lordships attended to the Words of the Record. The Objection is there shortly stated as in any other Minute of Debate, and the Record bears, 'That the Objection was considered, and
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‘ the House having *acquiesced*, i. e. *agreed*, to sustain the Vote, ‘ the Objection was passed from by the Party, and allowed to be ‘ withdrawn.’ So that there is not the least Reason for insinuating, That the Decision or Opinion, given by Parliament in that Case, proceeded upon the Objection’s being withdrawn by the Party; on the contrary, it appears, That the House of Parliament considered the Objection, and agreed to sustain the Vote of the Town of *Paisley*, and thereupon the Party passed from his Objection and was allowed to withdraw the same, which made it unnecessary to express the Judgment of the House in any other Form of Words; and the Acquiescence of the Freeholders of the County since that Time, notwithstanding the many disputed Elections which have occurred, clearly shows, That the Vote of the Burgh of *Paisley* was held as indisputable after the above Decision of Parliament.

And as to what is said, That the Decisions of Parliament were frequently determined by the Prevalency of Faction, or some Motive of the like Kind; the Respondents apprehend it is indecent to arraign the Judgments of that High Court before your Lordships: You cannot enter into Considerations of that Kind; nor is there any Ground for presuming, That the above Decision proceeded from any improper Motive, as the Decision was agreeable to Law, and the Principles of the Constitution, as understood by the great Men who sat in that Parliament, and in the Parliament 1681.

And the Respondents will take the Liberty to say, That, if the Vote of the Town of *Paisley* was then held in Parliament to be agreeable to Law and the Constitution, there is no posterior Statute of the Parliament of *Great Britain* which can now lead your Lordships to a contrary Decision. This has been fully illustrated in the Answers to the original Complaint; and as the reclaiming Petition has stated nothing new upon that Branch of the Argument, the Respondents beg leave to refer to their former Answers.

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By

By the Statute of the 16th of the King, it is enacted, ' That
 ' it shall be lawful for any Freeholder, standing upon the Roll,
 ' to object to the Title of any Freeholder then standing up-
 ' on the Roll last made up, and for that Purpose, to apply to
 ' the Court of Session by Complaint, at any Time before the
 ' 1st of *December* 1743; and if no such Complaint shall be ex-
 ' hibited within the Time aforesaid, then, and in that Case, no
 ' Freeholder, who at present stands upon the Roll's last made up
 ' in the said Counties or Stewarties respectively, shall be struck
 ' off or left out of the Roll, except upon sufficient Objections,
 ' arising from the Alteration of that Right or Title in respect
 ' of which he was inrolled, sustained by the other Freeholders
 ' standing upon the said Roll.' And upon this Clause of the
 Statute, the Respondents founded a separate Answer to the
 Complaint, *viz.* That no Complaint was properly made in this
 Court against the Vote of the Town of *Paisley* within the
 Time limited by the Statute, and therefore such Complaint is not
 now competent, except upon an Alteration of the Right or
 Title of the Town, in respect of which their Delegate stands
 upon the Roll.

The Gentlemen who now complain, endeavour to obviate
 this Answer, and plead, That the above Clause of the Statute
 does not apply to the present Case; That it relates to the In-
 rolment of *Persons* and not of *Rights or Titles*, and never was
 intended to create a perpetual Qualification to vote without any
 Challenge, which they are pleased to suppose must be the Case,
 if the present Complaint is not sustained; and they insist, That
 there is the same Alteration, when the Delegate is changed, as
 when an Heir succeeds to his Predecessor.

But the Respondents cannot admit any Part of this Reasoning.
 The Clause of the Statute most certainly applied to the Delegate
 of the Burgh of *Paisley*, as well as to any other Freeholder
 then upon the Roll; and no Body could have doubted of the
 Competency of a Complaint against the Title of such Delegate,
 as well as against any other Person then standing upon the Roll:

And

And accordingly a Complaint was exhibited for that Purpose, and the Competency of it was not doubted; but it was dismissed by the Court, as not being duly served within the Time prescribed by the Statute. And if such Complaint had not been understood as limited by the Statute, there can be little Doubt that new Service would have been made, and the Complaint brought to Trial before your Lordships. The Respondents agree, that this, and all the other Laws, relate to the Inrolment of *Persons*, and not of *Rights*; and they apprehend, they have clearly shown that the Delegate, chosen by the Magistrates and Council of this Burgh, is such a *Person* as is intitled to remain upon the Roll, and to vote, in Right of the freehold Estate belonging to the Burgh, until an Alteration happen of the Right or Title in respect of which their Delegate was inrolled. The Burgh being a Body politic and corporate, is not subject to natural Death and Succession, as an individual Person; but this cannot make any Alteration upon their Right, neither is there any parallel betwixt the Change which happens by the Death and Succession of other Freeholders, and the Change which the Magistrates and Council may think fit to make of their Delegate. When a Freeholder dies, his Heir must be of new inrolled, and every Objection against his Title may competently be received and judged of by the Freeholders: But when the Delegate for this Burgh is changed, it requires no new Inrolment; for he only sustains the Person, and votes in the Right of the incorporate Body, which remains the same: Nor does it from thence follow, that the Right of the Burgh is *perpetual* and *indefeasible*; for although the Burgh is not subject to a Change of Person by Death and Succession, yet their Right is subject to all other Alterations, by voluntary or legal Alienations, as the Estate of any other Freeholder; and upon such Alteration, no doubt, a Remedy would be competent at Common Law for expunging the Delegate of this Burgh from the Roll.

As to the Clause quoted in the last Page of the Petition,

tion, from the Statute of the 16th of the King, it is nothing to the Purpose ; it relates to the County of *Sutherland* only ; it enacts nothing which can take away the Right of the Respondents : It only provides, ‘ That where Lands are holden of the King or Prince, by a Peer, or other Person, or Body politic or corporate, *who, by Law, are disabled* to be a Member of the House of Commons, or to vote in such Elections, in such Case, the Proprietor and Owner of such Lands, and not any of his Superiors, shall be intitled to vote, or to be elected, in respect of the same Lands.’

These Words do not determine what Peers, or other Persons, or Bodies politic or corporate, are disabled to vote in such Elections. The Peers of this Realm and royal Burghs were the only *Persons and Bodies* under View : But a Peer of *Ireland*, or a Burgh of Baronry, such as *Paisley*, were not under the View of the Legislature ; and notwithstanding of the general Expression of this Clause, the Respondents apprehend, that a Peer of *Ireland*, or such a Body politic and corporate as the Burgh of *Paisley*, infest in Lands holding of the Crown, and in Possession of the Right of voting, for a hundred Years, would have been intitled to continue upon the Roll, and to vote upon these Lands, and not the Vassals under such Peer or Burgh ; because neither the one nor the other *is disabled by Law to vote in such Election* ; and consequently would not fall under the Proviso in this Statute, even in the County of *Sutherland* : But much less can that Clause be extended, by Implication, to take away the Right of this Burgh in another County, which was not in the View or Intention of the Legislature.

In respect whereof, &c.



THO. MILLER.